

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 888

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE NEW MEXICO  
ENVIRONMENTAL HEALTH ACT; REQUIRING NOTICE AND COMMUNITY IMPACT  
ASSESSMENT REPORTS PRIOR TO CERTAIN ACTIONS BY THE DEPARTMENT  
OF ENVIRONMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"New Mexico Environmental Health Act".

Section 2. PURPOSE.--The purpose of the New Mexico  
Environmental Health Act is to require that the department of  
environment consider the effects of decisions that may have a  
significant impact on New Mexico communities.

Section 3. DEFINITIONS.--As used in the New Mexico  
Environmental Health Act:

A. "community" means an area of human habitation

1 within New Mexico that:

2 (1) includes at least fifty individuals within  
3 one square mile of each other and within five miles of the  
4 geographic center of the regulated facility at issue; and

5 (2) will be affected by a decision  
6 significantly affecting a community;

7 B. "cumulative impact" means the impact that results  
8 from the incremental impact of the action at issue when added  
9 to the impact from other past, present and reasonably  
10 foreseeable future actions regardless of what agency or person  
11 undertakes such other actions. Cumulative impacts can result  
12 from individually minor but collectively significant actions  
13 taking place over a period of time;

14 C. "decision significantly affecting a community"  
15 means a determination by the department pertaining to a  
16 regulated facility that will have a significant present, future  
17 or cumulative impact on the public health, safety, welfare or  
18 environment of the residents of a community. A "decision  
19 significantly affecting a community" may include any decision  
20 by the department to:

21 (1) certify compliance with any applicable  
22 state or United States statute or rule;

23 (2) issue, renew, amend or deny any permit; or

24 (3) issue, renew or amend any permit with  
25 terms or conditions;

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1           D. "department" means the department of environment  
2 and any of its employees or agents;

3           E. "impact" means a present, future or cumulative  
4 significant effect on the public health, safety, welfare or  
5 environment of the residents of a community;

6           F. "proceeding" means any department administrative  
7 or other process that could result in a decision significantly  
8 affecting a community; and

9           G. "regulated facility" means an entity or  
10 operation, whether privately or publicly owned and operated,  
11 that has or will have a significant present, future or  
12 cumulative impact on the public health, safety, welfare or  
13 environment of the residents of a community, and that is  
14 authorized to be constructed or operated by a decision of the  
15 department or governed by a permit issued by the department. A  
16 "regulated facility":

17                   (1) includes:

18                           (a) a solid waste facility permitted to  
19 be constructed or operated pursuant to the Solid Waste Act and  
20 rules issued pursuant to that act;

21                           (b) a hazardous waste facility  
22 authorized to be constructed or operated pursuant to the  
23 Hazardous Waste Act and rules issued pursuant to that act;

24                           (c) a facility that has obtained, or is  
25 required to obtain, a Title V air quality permit pursuant to

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1 federal law and state rules; and

2 (d) a wastewater treatment plant or  
3 other facility that is required to obtain a permit pursuant to  
4 the federal Water Pollution Control Act or the Water Quality  
5 Act, and that discharges at least one hundred thousand gallons  
6 per day; but

7 (2) does not include a facility that does not  
8 have the potential individually to have a significant impact on  
9 a community, including a drinking water system, health clinic,  
10 restaurant, on-site liquid waste system or swimming pool.

11 Section 4. COMMUNITY IMPACT ASSESSMENT REPORT REQUIRED.--

12 A. Prior to making a decision significantly  
13 affecting a community, the owner or operator of the regulated  
14 facility or, if the regulated facility is proposed, the person  
15 proposing the facility shall cause to be prepared a community  
16 impact assessment report. The community impact assessment  
17 report shall be prepared pursuant to the following criteria:

18 (1) the department shall compile a list of  
19 potential contractors qualified to prepare a community impact  
20 assessment report in the subject communities. To qualify, a  
21 potential contractor shall show a familiarity with the  
22 communities and a knowledge of the communities' resources and  
23 present issues facing the communities;

24 (2) the owner or operator of the existing  
25 facility, or the person proposing a proposed facility, shall

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1 select a contractor to prepare the community impact assessment  
2 report from the list;

3 (3) the owner or operator of the existing  
4 facility, or the person proposing a proposed facility, shall  
5 pay the cost of the report;

6 (4) the community impact assessment report  
7 shall be written in plain language that can be understood by  
8 the residents of any community that will be affected by the  
9 regulated facility; and

10 (5) the community impact assessment report  
11 also shall be written in English and in any language or  
12 languages other than English that are estimated by the  
13 department to be spoken in more than thirty-five percent of the  
14 homes in a community.

15 B. At a minimum, the community impact assessment  
16 report shall include the following:

17 (1) the demographic makeup of each community,  
18 as shown by the most recent United States census data,  
19 including the ethnic, racial and linguistic populations and  
20 income level in that community;

21 (2) the present, future and cumulative impacts  
22 that the decision significantly affecting a community will have  
23 on the public health, safety, welfare or environment of the  
24 residents of a community;

25 (3) the other known existing and proposed

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1 regulated facilities that will have an impact on the public  
2 health, safety, welfare or environment of the residents of a  
3 community; and

4 (4) any other known environmental factors that  
5 will have an impact on the public health, safety, welfare or  
6 environment of the residents of a community.

7 Section 5. PUBLIC NOTICE REQUIREMENTS.--For any decision  
8 significantly affecting a community for which a community  
9 impact assessment report is required, the department shall  
10 cause notice of the proceeding to be given to residents of each  
11 community. The notice shall be given at the time that the  
12 application or other request for the decision is filed, and  
13 shall be given in the manner that is prescribed by the statutes  
14 and rules that govern the regulated facility that is at issue.  
15 The notice shall explain the procedure by which residents of  
16 each community that is or will be affected by the decision  
17 significantly affecting a community may provide oral and  
18 written input into the community impact assessment report.

19 Section 6. DEPARTMENT DECISION.--In making a decision  
20 significantly affecting a community, the department shall take  
21 into account a community impact assessment report prepared  
22 concerning the decision. The department shall explain in any  
23 written decision significantly affecting a community the manner  
24 in which the community impact assessment report has been taken  
25 into account.

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1           Section 7. RULES.--The secretary of environment shall  
2 promulgate such rules as are necessary to ensure compliance  
3 with the provisions of the New Mexico Environmental Health Act;  
4 provided that, in promulgating rules pursuant to this section,  
5 the secretary shall follow the notice and hearing procedures  
6 set forth in Section 74-1-9 NMSA 1978. At a minimum, the rules  
7 shall provide procedures for oral and written input into  
8 community impact assessment reports by residents of communities  
9 that are or will be affected by the decision affecting a  
10 community.

11           Section 8. APPLICABILITY--STRICTER REQUIREMENTS NOT  
12 AFFECTED--OTHER REQUIREMENT FOR COMMUNITY IMPACT ASSESSMENT.--

13           A. Nothing in the New Mexico Environmental Health  
14 Act shall be construed to preempt more extensive requirements  
15 of any statute or rule adopted for any program administered by  
16 the department.

17           B. If a statute or rule adopted for a program  
18 administered by the department requires the preparation of a  
19 community impact assessment report, nothing in the New Mexico  
20 Environmental Health Act shall be construed to require the  
21 preparation of a second community impact assessment report.

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